

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FN 2006-003798

08/21/2009

HONORABLE DEAN M. FINK

CLERK OF THE COURT

D. Ganther

Deputy

IN RE THE MARRIAGE OF
ANDREW JOHN KACIC

ANDREW JOHN KACIC
PO BOX 6216
SCOTTSDALE AZ 85261

AND

CYNTHIA CHRISTIE-LEE

TODD H FRANKS

RICHARD C UNDERWOOD
JOHN E HERRICK

RULING

The Court originally took this matter under advisement following a five-day trial to the bench in March, 2009. The parties were granted leave to file post-trial Closing Statements and Applications for Attorneys' Fees, which they did. The Court then had to resolve a post-trial motion regarding supplementation of the closing arguments, which delayed the closing of the trial record. The Court issued a ruling on the post-trial motion on July 27, 2009, which closed the trial record.

The Court notes that the Attorneys' Fee briefing in this matter includes a "Motion to Strike Text Argument of Application for Award of Attorney's Fees and Expenses" filed by Husband on April 24, 2009.

IT IS HEREBY ORDERED denying Husband's Motion to Strike Text Argument of Application for Award of Attorney's Fees and Expenses.

Based upon further review and consideration of the evidence, argument, and case file in this matter, the Court issues the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

GENERAL FINDINGS AND JURISDICTION

1. Petitioner Andrew Kacic ("Husband") and Respondent Cynthia Christie-Lee ("Wife") were domiciled in the County of Maricopa, State of Arizona, for a period of at least ninety (90) days prior to Husband filing the divorce petition in this action.
2. Husband filed the divorce petition in this matter on September 12, 2006.
3. Husband served Wife with the divorce petition on September 25, 2006. As of that date of service, each spouse's interest terminated in the earnings of the other party accrued for services rendered as of the date of service of process and thereafter. *See ARS §§ 25-211 and 25-213*. Service of the divorce petition did not alter the community interest in earnings earned or accrued for services rendered by a party prior to service of the divorce petition, irrespective of whether the earnings were paid or received after the date of service of process. *Id.*
4. At least sixty (60) days have expired since service of the divorce petition on Wife.
5. Husband was born on May 13, 1947, resides at 6927 East Cheney, Paradise Valley, Arizona 85253 and presently is employed as a businessman and consultant.
6. Wife was born on July 7, 1967, resides at 4430 North 46th Place, Phoenix, Arizona 85018 and her occupation has been as a real estate agent.
7. Wife holds a valid Arizona real estate license.
8. Husband and Wife were married on or about August 7, 2004, in Orange County, California, and ever since that date have been husband and wife.
9. The parties do not have a covenant marriage.
10. The conciliation provisions of *ARS § 25-381.09* either do not apply or have been met.
11. The parties' marriage is irretrievably broken and there is no reasonable prospect of reconciliation.
12. Husband and Wife do not have any children in common.
13. Wife is not now pregnant.
14. Husband was represented by counsel in this proceeding, Bruce Childers, Esq., from inception of the proceeding until January 13, 2009, at which time the Court granted Mr. Childers' motion to withdraw. Since then Husband has been representing himself. The legal standard for a self-represented party was recently summarized in *In re Marriage of Williams*, 219 Ariz. 546, 549, 200 P.3d 1043, 1046 (App. 2008):

Parties who choose to represent themselves "are entitled to no more consideration than if they had been represented by counsel" and are held to the same standards as attorneys with respect to "familiarity with required procedures and ... notice of statutes and local rules." *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963); *see also Higgins v. Higgins*, 194 Ariz. 266, ¶ 12, 981 P.2d 134, 138 (App.1999). A party's ignorance of the

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law is not an excuse for failing to comply with it. *Moore v. Meyers*, 31 Ariz. 347, 356, 253 P. 626, 629 (1927).

15. Husband previously filed a divorce proceeding in Maricopa County Superior Court designated as case no. FN2005-002283, which ultimately was dismissed in 2005 when the parties reconciled.

16. To the extent it has the jurisdiction to do so, the Court has considered and made provisions for spousal maintenance and division of property and debts.

THE PARTIES' LACK OF CREDIBILITY

17. Neither party was a credible witness in this proceeding.

18. There are many indicia of Husband's lack of credibility, including, but not limited to:

- a. The Court's personal observations of Husband.
- b. Husband's feigned lack of knowledge regarding his own financial affairs and businesses at the temporary orders hearing and at trial.
- c. The apparent tax fraud involved in Husband's income tax filings for those entities operated by him. Husband runs substantial personal expenses through his businesses, falsely claiming them as business expenses. Husband also appears to hold personal assets in entities, for the purpose of creating confusion and creating the appearance of a right to deduct expenses (for example, the Montana residence which he personally occupies more than 14 days per year or his Paradise Valley residence). Husband also engages in inter-entity accounting entries (many of which do not appear to be consistent) apparently to deprive taxing authorities of revenue due – for example, carrying on the books of Advisory Services, Inc. and Kandy Limited Partnership, LLP, large uncollectible receivable balances from GNEG (at least \$250,000), instead of writing off these balances due, while continuing to carry the account payable on the GNEG books, which avoids the income which GNEG would need to report from forgiveness of indebtedness and the resulting income tax Husband would need to pay on more than \$250,000 of income. It also appears Husband is not reporting imputed interest income with respect to these obligations.
- d. Inconsistencies in Husband's records, including his records concerning the pension plan contributions and dates of contributions.
- e. Husband's failure to comply with orders concerning payment of *pendente lite* attorneys' fees and his false claims in pleadings regarding inability to make the payments and inability to pay even his own counsel. At all times after the Court issued its orders concerning payment of *pendente lite* attorneys' fees, Husband had the ability to comply with the Court's orders and was paying his

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own counsel, despite Husband's claims to the contrary. Husband, through his various entities, appears to have had many hundreds of thousands of dollars of liquid cash available to pay the sums ordered by the Court. For example, according to the financial records Husband produced shortly before the contempt hearing scheduled to occur in this matter on or about May 6, 2008:

- i. With respect to the cash available to Husband to pay the \$75,000 of attorneys' fees, as set forth in greater detail in the full chart below, within various accounts Husband utilizes and for which he produced full or partial statements, the following were the reconciled balances of just liquid assets under his control (according to reconciliations Husband produced) as of dates pertinent to enforcement of the Court's orders and determination of whether Husband willfully failed to comply with the payment obligation the Court imposed:

Date	Cumulative Balance Available to Husband
12/31/07	\$ 407,073.21
1/31/08	\$ 340,815.97
2/29/09 -3/2/08	\$ 286,899.59
3/31/08 - 4/2/08	\$ 255,658.55

The following is the detail for the foregoing numbers:

Balance Date	Account	Balance Amount
12/31/07		
	Advisory Services, Inc. Sunrise Bank Money Market	\$ 147,738.28
	Advisory Services, Inc. Sunrise Bank Checking	\$ 1,406.82
	Advisory Services, Inc. Compass Bank 6985	\$ 2,907.23
	Advisory Services, Inc. Ameritrade 5415	Not provided
	Advisory Services, Inc. Ameritrade 3041	\$ 14,473.84
	Sterling Foundation Sunrise Bank Money Market	\$ 75,128.78
	Sterling Foundation Sunrise Bank Checking	\$ 474.83
	Kandy Limited Partnership – Ameritrade	\$ 76,143.91
	Kandy Limited Partnership Sunrise Bank Money Market	\$ 1,319.05
	Kandy Limited Partnership Sunrise Bank Checking	\$ 99.03
	Kandy Limited Partnership Compass Bank Money Market 9933	\$ 10,163.51

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Balance Date	Account	Balance Amount
	Taurus Consulting Bank of Tucson Money Market	\$ 1,011.85
	Taurus Consulting Bank of Tucson Checking	\$ 962.64
	Taurus Consulting Bank of Tucson Savings	\$ 154.64
	A. J. Kacic Sunrise Bank Operating Account	\$ 2,806.49
	A. J. Kacic Compass Bank Checking	\$ 1,002.48
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$ 997.42
	A. J. Kacic & Associates Bank of Tucson Business Money Market (1/2/07)	\$ 4,687.72
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	\$ 3,553.83
	Andrew Kacic Ameritrade 9054	\$ 26,832.49
	Andrew Kacic Ameritrade IRA 1336	\$ 11,849.10
	Andrew Kacic American Funds IRA rollover	\$ 23,359.27
		\$ 407,073.21
1/31/08		
	Advisory Services, Inc. Sunrise Bank Money Market	\$ 88,505.95
	Advisory Services, Inc. Sunrise Bank Checking	\$ 628.86
	Advisory Services, Inc. Compass Bank 6985	\$ 1,445.77
	Advisory Services, Inc. Ameritrade 5415	Not provided
	Advisory Services, Inc. Ameritrade 3041	\$ 13,773.88
	Sterling Foundation Sunrise Bank Money Market	\$ 73,517.43
	Sterling Foundation Sunrise Bank Checking	\$ 1,550.83
	Kandy Limited Partnership – Ameritrade	\$ 76,143.92
	Kandy Limited Partnership Sunrise Bank Money Market	\$ 1,321.28
	Kandy Limited Partnership Sunrise Bank Checking	\$ 1,290.02
	Kandy Limited Partnership Compass Bank Money Market 9933	\$ 10,200.12
	Taurus Consulting Bank of Tucson Money Market	\$ 1,013.50
	Taurus Consulting Bank of Tucson Checking	\$ 1,136.63
	Taurus Consulting Bank of Tucson Savings (quarterly reports only)	\$ 154.64
	A. J. Kacic Sunrise Bank Operating Account	\$ 843.89
	A. J. Kacic Compass Bank Checking	\$ 1,002.50
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$ 1,545.08

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Balance Date	Account	Balance Amount
	A. J. Kacic & Associates Bank of Tucson Business Money Market (2/2/07)	\$ 4,695.34
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	Not produced
	Andrew Kacic Ameritrade 9054	\$ 26,837.96
	Andrew Kacic Ameritrade IRA 1336 (no statement provided, but assumed retention of asset at prior value)	\$ 11,849.10
	Andrew Kacic American Funds IRA rollover (no statement provided, but assumed retention of asset at prior value)	\$ 23,359.27
		\$ 340,815.97
2/29/09 - 3/2/08		
	Advisory Services, Inc. Sunrise Bank Money Market	\$ 63,565.69
	Advisory Services, Inc. Sunrise Bank Checking	\$ 307.86
	Advisory Services, Inc. Compass Bank 6985	\$ 297.42
	Advisory Services, Inc. Ameritrade 5415	Not provided
	Advisory Services, Inc. Ameritrade 3041	\$ 10,673.91
	Sterling Foundation Sunrise Bank Money Market	\$ 73,692.19
	Sterling Foundation Sunrise Bank Checking	\$ 1,288.48
	Kandy Limited Partnership – Ameritrade	\$ 57,143.92
	Kandy Limited Partnership Sunrise Bank Money Market	\$ 913.20
	Kandy Limited Partnership Sunrise Bank Checking	\$ 539.61
	Kandy Limited Partnership Compass Bank Money Market 9933	\$ 8,228.10
	Taurus Consulting Bank of Tucson Money Market	\$ 1,014.68
	Taurus Consulting Bank of Tucson Checking (3/2/08)	\$ 321.06
	Taurus Consulting Bank of Tucson Savings (quarterly reports only)	\$ 154.64
	A. J. Kacic Sunrise Bank Operating Account	\$ 766.12
	A. J. Kacic Compass Bank Checking (2/22/08)	\$ 1,002.54
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$ 642.29
	A. J. Kacic & Associates Bank of Tucson Business Money Market (3/2/08)	\$ 4,700.79
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime	Not provided

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Balance Date	Account	Balance Amount
	Checking	
	Andrew Kacic Ameritrade 9054	\$ 26,438.72
	Andrew Kacic Ameritrade IRA 1336 (no statement provided, but assumed retention of asset at prior value)	\$ 11,849.10
	Andrew Kacic American Funds IRA rollover (no statement provided, but assumed retention of asset at prior value)	\$ 23,359.27
		\$ 286,899.59
3/31/08 - 4/2/08		
	Advisory Services, Inc. Sunrise Bank Money Market	\$ 31,644.56
	Advisory Services, Inc. Sunrise Bank Checking	\$ 1,150.18
	Advisory Services, Inc. Compass Bank 6985	\$ 1,635.96
	Advisory Services, Inc. Ameritrade 5415	Not provided
	Advisory Services, Inc. Ameritrade 3041	\$ 9,473.95
	Sterling Foundation Sunrise Bank Money Market	\$ 73,879.44
	Sterling Foundation Sunrise Bank Checking	\$ 1,288.48
	Kandy Limited Partnership – Ameritrade	\$ 47,643.93
	Kandy Limited Partnership Sunrise Bank Money Market	\$ 698.51
	Kandy Limited Partnership Sunrise Bank Checking (no reconciliation provided, so bank balance utilized)	\$ 13,783.54
	Kandy Limited Partnership Compass Bank Money Market 9933	\$ 8,235.04
	Taurus Consulting Bank of Tucson Money Market	\$ 1,015.79
	Taurus Consulting Bank of Tucson Checking	\$ 495.06
	Taurus Consulting Bank of Tucson Savings	\$ 155.07
	A. J. Kacic Sunrise Bank Operating Account	\$ 1,543.98
	A. J. Kacic Compass Bank Checking (3/24/08)	\$ 1,002.58
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$ 128.78
	A. J. Kacic & Associates Bank of Tucson Business Money Market	\$ 4,705.95
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	Not produced
	Andrew Kacic Ameritrade 9054	\$ 21,969.38
	Andrew Kacic Ameritrade IRA 1336 (no statement	\$ 11,849.10

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Balance Date	Account	Balance Amount
	provided, but assumed retention of asset at prior value)	
	Andrew Kacic American Funds IRA rollover (no statement provided, but assumed retention of asset at prior value)	\$ 23,359.27
		\$ 255,658.55

- ii. Although Husband asserted in pleadings seeking to avoid payment of the \$75,000 of attorneys fees, that he has been unable to pay his own attorney accrued and unpaid attorneys' fees and costs incurred in this matter, Response to Motion for Order to Appear Re: Contempt, dated March 18, 2008, at p.2, ¶ 5, it appears from Husband's bank records that he did, in fact, have the ability to pay the assessed temporary attorneys' fee order of \$75,000.00. (Husband did ultimately pay this amount on the eve of a contempt hearing regarding same.)
- iii. Thereafter, with respect to the additional \$21,294.90 of attorneys' fees the Court ordered Husband to pay by judgment dated September 12, 2008 (filed September 15, 2008), Husband also claimed he did not have the ability to pay those attorneys' fees, and through the date of trial has failed to pay them. Nonetheless, he made further payments to his own counsel, Mr. Childers (\$5,000 paid to Mr. Childers in November, 2008); continued, through the date of his February, 2009, deposition, to maintain the payments on a current basis for a relatively expensive lifestyle, including homes in Paradise Valley, Arizona, and Montana, and several vehicles; and continued to maintain bank balances sufficient to satisfy the Court's orders concerning payment of fees. The pertinent bank balances were, as follows:

Date	Cumulative Balance Available to Husband
08/2008	\$183,334.92
09/2008	\$172,706.49
10/2008	\$162,917.90
11/2008	\$122,807.25
12/2008	\$105,063.71

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08/2008		
	Advisory Services, Inc. Sunrise Bank Money Market	Not provided
	Advisory Services, Inc. Sunrise Bank Checking	\$3,792.00
	Advisory Services, Inc. Compass Bank 6985	\$2,737.14
	Advisory Services, Inc. Ameritrade 5415 n/k/a 9935	\$88,957.34
	Advisory Services, Inc. Ameritrade 3041	\$4,334.14
	Sterling Foundation Sunrise Bank Money Market	\$4,133.28
	Sterling Foundation Sunrise Bank Checking	\$1,195.72
	Kandy Limited Partnership – Ameritrade	\$19,143.97
	Kandy Limited Partnership Sunrise Bank Money Market	\$1,617.14
	Kandy Limited Partnership Sunrise Bank Checking (no reconciliation provided, so bank balance utilized)	\$1,786.89
	Kandy Limited Partnership Compass Bank Money Market 9933	\$4,254.98
	Taurus Consulting Bank of Tucson Money Market	\$1,020.21
	Taurus Consulting Bank of Tucson Checking	\$540.08
	Taurus Consulting Bank of Tucson Savings (Qrtly Statements only)	\$155.85
	A. J. Kacic Sunrise Bank Operating Account 2075	\$6,972.45
	A. J. Kacic Compass Bank Checking 4543	\$1,002.78
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$128.78
	A. J. Kacic & Associates Bank of Tucson Business Money Market	\$3,411.33
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	Not provided
	Andrew Kacic Ameritrade 9054	\$9,679.40
	Andrew Kacic Ameritrade IRA 1336 (Statement period: 07/01/08-09/30/08)	\$10,150.41
	Andrew Kacic American Funds IRA rollover (Qrtly Statement 07/01/08-09/30/08)	\$18,321.03
	Hunter Resources, Inc. <i>(No statements provided. As of 03/31/08, Balance Sheet shows Sunrise Bank MM balance of \$33,492.23; Sunrise Bank Checking balance of \$6,697.31; Compass Checking \$595.59 and CD-EPA balance of \$3,700)</i>	
		\$183,334.92

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09/2008		
	Advisory Services, Inc. Sunrise Bank Money Market	\$1,509.22
	Advisory Services, Inc. Sunrise Bank Checking	\$14,824.29
	Advisory Services, Inc. Compass Bank 6985	\$2,565.66
	Advisory Services, Inc. Ameritrade 5415 n/k/a 9935	\$76,800.14
	Advisory Services, Inc. Ameritrade 3041	\$2,094.17
	Sterling Foundation Sunrise Bank Money Market	\$2,818.20
	Sterling Foundation Sunrise Bank Checking	\$2,496.01
	Kandy Limited Partnership – Ameritrade	\$6,223.98
	Kandy Limited Partnership Sunrise Bank Money Market	\$1,018.73
	Kandy Limited Partnership Sunrise Bank Checking (no reconciliation provided, so bank balance utilized)	\$10,928.85
	Kandy Limited Partnership Compass Bank Money Market 9933	\$4,256.84
	Taurus Consulting Bank of Tucson Money Market	\$1,021.05
	Taurus Consulting Bank of Tucson Checking	\$532.66
	Taurus Consulting Bank of Tucson Savings	\$155.85
	A. J. Kacic Sunrise Bank Operating Account 2075	\$3,310.76
	A. J. Kacic Compass Bank Checking 4543	\$1,002.82
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$128.78
	A. J. Kacic & Associates Bank of Tucson Business Money Market	\$3,414.13
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	Not Provided
	Andrew Kacic Ameritrade 9054	\$9,132.91
	Andrew Kacic Ameritrade IRA 1336 (Statement period: 07/01/08-09/30/08)	\$10,150.41
	Andrew Kacic American Funds IRA rollover (Qrtly Statement 07/01/08-09/30/08)	\$18,321.03
		\$172,706.49
10/2008		
	Advisory Services, Inc. Sunrise Bank Money Market	\$1,514.53
	Advisory Services, Inc. Sunrise Bank Checking	\$5,471.67
	Advisory Services, Inc. Compass Bank 6985	\$2,394.18
	Advisory Services, Inc. Ameritrade 5415 n/k/a 9935	\$78,617.96

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	Advisory Services, Inc. Ameritrade 3041	\$2,254.21
	Sterling Foundation Sunrise Bank Money Market	\$2,821.76
	Sterling Foundation Sunrise Bank Checking	\$1,536.80
	Kandy Limited Partnership – Ameritrade	\$6,223.99
	Kandy Limited Partnership Sunrise Bank Money Market	\$1,020.01
	Kandy Limited Partnership Sunrise Bank Checking (no reconciliation provided, so bank balance utilized)	\$14,820.32
	Kandy Limited Partnership Compass Bank Money Market 9933	\$4,258.64
	Taurus Consulting Bank of Tucson Money Market	\$1,021.91
	Taurus Consulting Bank of Tucson Checking	\$670.29
	Taurus Consulting Bank of Tucson Savings	\$156.24
	A. J. Kacic Sunrise Bank Operating Account 2075	\$3,097.41
	A. J. Kacic Compass Bank Checking 4543	\$1,002.86
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$128.78
	A. J. Kacic & Associates Bank of Tucson Business Money Market	\$3,417.02
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	Not provided
	Andrew Kacic Ameritrade 9054	\$7,945.63
	Andrew Kacic Ameritrade IRA 1336 (Statement period: 10/01/08-12/31/08)	\$9,834.10
	Andrew Kacic American Funds IRA rollover (Yr End Statement 12/31/08)	\$14,709.59
		\$162,917.90
11/2008		
	Advisory Services, Inc. Sunrise Bank Money Market	\$1,518.56
	Advisory Services, Inc. Sunrise Bank Checking	\$2,545.06
	Advisory Services, Inc. Compass Bank 6985	\$1,394.18
	Advisory Services, Inc. Ameritrade 5415 n/k/a 9935	\$61,557.00
	Advisory Services, Inc. Ameritrade 3041	\$1,044.24
	Sterling Foundation Sunrise Bank Money Market	\$2,825.20
	Sterling Foundation Sunrise Bank Checking	\$1,536.80
	Kandy Limited Partnership – Ameritrade	\$182.00
	Kandy Limited Partnership Sunrise Bank Money Market	\$1,021.26

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Balance Date	Account	Balance Amount
	Kandy Limited Partnership Sunrise Bank Checking (no reconciliation provided, so bank balance utilized)	\$4,500.16
	Kandy Limited Partnership Compass Bank Money Market 9933	\$4,260.27
	Taurus Consulting Bank of Tucson Money Market	\$1,022.75
	Taurus Consulting Bank of Tucson Checking	\$570.82
	Taurus Consulting Bank of Tucson Savings	\$156.24
	A. J. Kacic Sunrise Bank Operating Account 2075	\$1,169.40
	A. J. Kacic Compass Bank Checking 4543	\$1,002.90
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$1,028.78
	A. J. Kacic & Associates Bank of Tucson Business Money Market	\$3,419.82
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	Not provided
	Andrew Kacic Ameritrade 9054	\$7,508.12
	Andrew Kacic Ameritrade IRA 1336 (no statement provided, but assumed retention of asset at prior value)	\$9,834.10
	Andrew Kacic American Funds IRA rollover (Yr End Statement 12/31/08)	\$14,709.59
		\$122,807.25
12/2008		
	Advisory Services, Inc. Sunrise Bank Money Market	\$1,522.59
	Advisory Services, Inc. Sunrise Bank Checking	\$2,112.08
	Advisory Services, Inc. Compass Bank 6985	\$1,651.22
	Advisory Services, Inc. Ameritrade 5415 n/k/a 9935	\$49,905.89
	Advisory Services, Inc. Ameritrade 3041	\$1,044.28
	Sterling Foundation Sunrise Bank Money Market	\$2,828.30
	Sterling Foundation Sunrise Bank Checking	\$16.80
	Kandy Limited Partnership – Ameritrade	\$1,094.01
	Kandy Limited Partnership Sunrise Bank Money Market	\$1,022.38
	Kandy Limited Partnership Sunrise Bank Checking (no reconciliation provided, so bank balance utilized)	\$1,283.76
	Kandy Limited Partnership Compass Bank Money Market 9933	\$4,262.19
	Taurus Consulting Bank of Tucson Money Market	\$1,023.62

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	Taurus Consulting Bank of Tucson Checking	\$137.11
	Taurus Consulting Bank of Tucson Savings	\$156.24
	A. J. Kacic Sunrise Bank Operating Account 2075	\$1,626.50
	A. J. Kacic Compass Bank Checking 4543	\$1,002.98
	A. J. Kacic & Associates Bank of Tucson Business Operating Account	\$1,028.78
	A. J. Kacic & Associates Bank of Tucson Business Money Market	\$2,081.03
	A. J. Kacic (with Jordan Kacic) Wells Fargo Prime Checking	Not provided
	Andrew Kacic Ameritrade 9054	\$6,720.26
	Andrew Kacic Ameritrade IRA 1336 (Statement period: 10/01/08-12/31/08)	\$9,834.10
	Andrew Kacic American Funds IRA rollover (Yr End Statement 12/31/08)	\$14,709.59
		\$105,063.71

The foregoing indicates Husband's failure to comply with the Court's order was a matter of volition, rather than a lack of resource, and his protestations regarding inability to pay were false representations to the Court.

- f. Husband claimed at various points during this litigation that he had provided full disclosure regarding all of his assets, when in fact he had not. For example, at the time of trial, Husband had not provided any disclosure regarding Zephyr Biometrics, Inc., a company in which he had an interest.
 - g. Husband's failure to timely disclose information regarding the sale of Pocket M.D., that occurred in July, 2007.
19. There are also many indicia of Wife's lack of credibility, including, but not limited to:
- a. The Court's personal observations of Wife.
 - b. Wife's testimony about her efforts to identify and obtain employment during the course of the divorce case, which were highly exaggerated, and not supported by significant credible documentary evidence.
 - c. Wife's confused and inconsistent testimony regarding her use of various surnames.
 - d. Wife's non-credible testimony about the circumstances and reasons that led to the settlement agreement admitted as trial exhibit 490 regarding her civil action

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against Husband and others regarding her prior employment with River Walk, LLC.

- e. At both the temporary orders hearing and the trial, Wife invoked the Fifth Amendment privilege against self-incrimination to avoid answering questions about her claimed \$25,000.00 monthly income on a signed residential loan application (trial exhibit 163).¹ The loan application indicates that it is a Federal crime “to knowingly make any false statements concerning any of the above facts.”
- f. Wife’s failure, despite repeated requests and a court order at hearing on January 28, 2009, to provide actual income tax returns to Husband for tax years 2005, 2006 or 2007. Wife produced unsigned draft returns, but no actual returns. Wife’s explanation of the reasons for her inability to produce actual, filed tax returns lacked credibility.

20. In short, with respect to credibility concerning the type of financial matters at issue in this proceeding, neither party appears hesitant to mislead the Court in an attempt to gain an advantage over the other party or to obfuscate the truth.

21. In fact, the parties’ lack of credibility is so pervasive that it is difficult for the Court to mine whatever nuggets of truth may exist from either party’s highly incredible testimony.

22. Despite an unusually lengthy five-day trial of this dissolution matter, as a result of both parties’ willingness to lie and failure to make full disclosures, the Court lacks confidence that it has a clear, accurate picture of: either party’s financial situation, either party’s true holdings, the value of Husband’s sole and separate businesses at the time of the marriage, the value of Husband’s sole and separate businesses at the date of service of the Petition or later dates, the true value of support provided to Wife by Husband during the marriage, the true extent to which community income was commingled with either party’s sole and separate property, and either party’s actual income.

23. As a result of the parties’ lack of credibility, the Court will make its best effort to resolve disputed issues accurately and equitably, but the Court does not believe that either party has been forthcoming or truthful in their presentations to the Court.

POCKET M.D., LLC

24. During the course of the parties’ marriage to each other, in May 2005, Husband commenced a new business, identified as Pocket M.D., LLC. Husband claims he sold his interest in the business prior to trial of this matter.

¹ When a party in a family court case invokes the Fifth Amendment, the Court may draw a negative inference from such invocation. *Montoya v. Superior Court*, 173 Ariz. 129, 131 (App. 1992). In this instance, Wife offered no credible testimony or evidence to overcome the negative inference, namely that she knowingly made a false statement on a loan application.

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25. As a business commenced during the parties' marriage, the interest in Pocket M.D., LLC presumptively is a community asset. Husband failed to meet his burden of proof to demonstrate the interest in Pocket M.D., LLC was not a community business and that the value of Pocket M.D., LLC did not develop as the result of Husband's services.

26. Husband's decision to place his interest in Pocket M.D., LLC inside one of his other business entities during the marriage does not obviate characterization of the business commenced during the marriage as presumptively a community business.

27. During the term of the parties' marriage and prior to service of the divorce petition, Husband, through his entity A. J. Kacic & Associates ("ASI") billed Pocket M.D., LLC the sum of approximately \$110,000 as consulting fees. These consulting fees for Husband's services constituted community property income which Husband commingled with his sole and separate entity ASI. Wife is entitled to receive her 50% interest in the ASI consulting income.

28. In accordance with the Navigant Consulting report submitted by Wife, Husband also realized profits upon sale of his interest in Pocket M.D., LLC of at least \$331,264. Wife is entitled to receive her 50% share of those profits.

29. Based on the consulting income and profits related to Pocket M.D., LLC, the total community income derived from this entity was at least \$441,264. There is no clear evidence that the Pocket M.D. income was distributed to Wife² and Husband did, in fact, commingle that income with his other resources in ASI, which Husband then moved among his various sole and separate entities. Accordingly, Wife is entitled to her 50% share of all income derived from Pocket M.D., LLC and the Court will award Wife judgment against Husband in the sum of \$220,632.

RIVER WALK DEVELOPMENT, RIVER ELKS, LLC, AND RIVER MARVIN, LLC

30. Husband claims any interests held in his name or the name of any of his entities in River Elks, LLC and River Marvin, LLC, are his sole and separate property.

31. Wife, on the other hand, claims Husband assured her the investment in this real estate development was the parties' joint property, to be owned together in equal shares. Wife has not met her burden of proof as to these assertions.

32. Wife further asserts she undertook substantial work locating the property, undertaking development planning and then acting as a real estate agent in connection with the development. Wife did, however, receive compensation from the entities during the marriage.

² Wife's position about the receipt of support from Husband seems to be internally inconsistent. On the one hand, Wife asserts that she primarily relied on Husband's financial support both before and during the marriage as a justification for her request for spousal maintenance, and, on the other hand, she denies receiving any financial support related to Husband's labor or business dealings during the marriage as a basis for requesting half of all such sums. On closer inspection, however, it seems that Wife's argument is really that Husband failed to demonstrate specifically what support he gave her during the marriage, and therefore, the Court should assume she received none.

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33. Husband caused Wife to sign loan documentation in connection with the River Walk development, obligating Wife and her credit for significant liability in connection with the development.

34. Although Wife was not an owner of the River Walk development entities, the marital community was entitled to receive reasonable compensation for the considerable efforts Husband devoted to those entities during the marriage. *See Cockrill v. Cockrill*, 124 Ariz. 50, 601 P.2d 1334 (1979); *Rueschenberg v. Rueschenberg*, 219 Ariz. 249, 196 P.3d 852 (App. 2008). According to Husband, he devoted extensive, nearly full-time attention to this real estate development during the marriage. Those services and the compensation derived from those services, including any compensation Husband diverted to his sole and separate entities, presumptively is community property.

35. Husband represents River Marvin was previously liquidated.

36. River Elks, LLC, is in bankruptcy, and per Husband's representation, that bankruptcy is in the process of conversion to a Chapter 7 liquidating bankruptcy. Therefore, for the purpose of this trial, the Court will assume the entity itself does not have any value, and should be awarded to Husband as his sole and separate property, with a zero value.

37. Husband asserts he obtained a release for himself and his partner, Mr. Marson, from all personal liability with respect to River Elks, LLC and River Marvin, LLC. However, the parties disagree on whether Husband obtained a release of Wife from the loan guarantee obligation. Husband alleges that he did; Wife disputes the allegation. Therefore, because these entities were Husband's sole and separate property, and because Husband asserts the prior release from liability was intended to benefit Wife as well as Husband, the Court finds it is equitable to require Husband to indemnify and hold Wife harmless with respect to her loan guarantees related to either of these corporations.

38. Since Husband asserts River Elks, LLC and River Marvin, LLC are his sole and separate property investments, it also is appropriate and equitable to order Husband to indemnify and hold Wife harmless from all liabilities associated with those entities, in addition to the loan guarantees.

39. As noted, Husband received extensive distributions from River Elks, LLC and River Marvin, LLC, since inception of those businesses as consulting fees to ASI or other entities. In light of the foregoing determinations, 50% of those distributions constituted Wife's property. It is clear that Husband funneled certain of these funds to Wife through CCK Properties, LLC, her sole and separate property, for her use. There is no reliable evidence, however, tracing the amounts Husband deposited into CCK Properties, LLC, or used in other ways to benefit Wife or the community versus amounts used to enhance his sole and separate estate. Therefore, the Court will provide, *infra*, (as the Court addresses Husband's overall business structure) for Wife to receive an interest in those sums.

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UNIT 87 AT RIVER WALK DEVELOPMENT

40. As of the date of service, Wife held a contract to acquire unit number 87 at the River Walk development, which was to be a model home for the development. Wife paid a \$10,000 deposit from community funds in connection with that contract. In addition, River Walk had entered into an agreement to lease back the unit for the sum of \$5,000 per month, for 24 months, which would have exceeded the expenses of ownership by approximately \$2,200 per month.

41. River Elks, LLC terminated both the purchase contract related to unit 87 and the lease back agreement. Although, under other circumstances, the result of this action might have been a loss to the marital community with respect to profits, the current real estate slump likely would have resulted in absence of any profits and a possible loss of equity. Therefore, with the exception of the issue related to return of the \$10,000 deposit, the Court will not hold either party responsible for damages to the community or a breach of fiduciary duty with respect to this transaction.

42. In connection with terminating Wife's right to purchase the unit 87, River Elks, LLC refunded Wife's deposit by check in the sum of \$10,000; but, Wife inexplicably never cashed the check. It is unclear whether that \$10,000 will be paid in full, or whether the parties will receive pennies on the dollar, as a result of the River Elks bankruptcy. Therefore, the Court shall award each party one half of any refund obtained from River Elks for the \$10,000. Wife and Husband shall cooperate, as necessary, to assert appropriate claims for the \$10,000 in the River Elks bankruptcy.

**WIFE'S CONTRACT OBLIGATIONS WITH RESPECT TO TERMINATION OF HER
SERVICES AT THE RIVER WALK DEVELOPMENT**

43. At the time Husband filed the divorce petition in this case, Wife was employed as a real estate agent for Realty Executives, selling units at River Walk.

44. At or about the time of filing of this divorce action, River Walk, LLC: terminated Wife's position as a real estate agent selling units at River Walk, terminated the listing agreement Wife held concerning River Walk; and asserted claims against Wife with respect to assumption of liability to other agents from commissions due Wife.

45. Wife brought a separate civil action against several defendants, including Husband, regarding these issues.

46. The parties, including Wife, entered into a settlement agreement regarding this lawsuit, which has been admitted in evidence as trial exhibit 490. Wife retained independent counsel, the Perkins Coie law firm, to represent her in connection with the claims asserted by Husband and River Elks, LLC. Wife alleges that she ultimately was forced to capitulate to Husband's demands by her broker, who would not benefit from any further litigation with Husband; however, Wife has not met her burden of establishing this fact, or of proving that the

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claims of Husband and/or River Elks were inappropriate. To the contrary, the settlement agreement, which was personally signed by Wife, specifically indicates “this Agreement is being entered into voluntarily and in reliance upon the Party’s respective judgment, belief and knowledge of the Agreement and all other facts and circumstances the Party considers relevant after consultation with the Party’s attorneys.” Trial ex. 490, at ¶ 8.

47. As a result of the settlement agreement, Wife was required to pay approximately \$100,000 in commissions, legal fees charged to her by Realty Executives, and expenses to other brokers and/or repayments to JJQ Investments. Wife also may owe an undetermined amount to another agent, Carl Wells, arising out of his services as a real estate agent in connection with River Walk. The Court finds that such obligations are Wife’s sole and separate liabilities, and shall be treated as such.

48. Therefore, Wife’s request for contribution from Husband toward these liabilities, including any obligation to Carl Wells that may not have been finally determined, is hereby denied.

**WIFE’S LEGAL FEES INCURRED IN CONNECTION WITH RIVER WALK UNIT 87
AND TERMINATION OF HER SERVICES AS REAL ESTATE SALES AGENT AT
RIVER WALK**

49. Wife incurred substantial legal fees with her divorce counsel in this case and with the law firm Perkins Coie, in connection with Wife’s lawsuit regarding unit 87 at River Walk, the leasing agreement concerning unit 87 at River Walk, and Wife’s commissions from the Riverwalk project.

50. The total sum incurred with Perkins Coie was allegedly \$68,900, with a balance of \$63,900 remaining outstanding.

51. The legal fees Wife incurred with Perkins Coie were not incurred for a community purpose and the Court finds that Wife’s request to recover same in this litigation is unreasonable and overreaching.

52. The Court notes that while certain issues were specifically carved out of the settlement agreement for resolution in this dissolution action (see trial ex. 490, “Recitals” at ¶ D), the issue of attorneys’ fees from the civil litigation was not among them. To the contrary, the settlement agreement indicates all parties shall bear their own attorneys’ fees and costs incurred to that point. (The agreement provided for shifting of fees for post-agreement proceedings regarding interpretation or enforcement of the agreement.)

53. Therefore, it is appropriate to order Wife to hold Husband harmless from the Perkins Coie debt, and award that debt to Wife as her sole and separate obligation.

WIFE’S REAL PROPERTIES

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54. Wife owns two Phoenix, Arizona real properties located respectively on Calle Redondo and on N. 46th Place.

55. Both properties were purchased during the marriage. The 46th Place property was purchased very shortly after the marriage on November 18, 2004, and the Calle Redondo residence was purchased on December 28, 2005.

56. Husband executed disclaimer deeds for both of Wife's real properties, making them sole and separate property.

57. Husband failed to demonstrate there was any increase in the value of the Calle Redondo property during the marriage.

58. Husband further failed to demonstrate there was any increase in the equity of the Calle Redondo property, as a result of use of any community funds, although it is clear Wife paid some community funds toward this property. Thus, the Court does not find that Husband has proven a specific claim for a community interest in the residence as set forth in the case of *Drahos v. Renz*, 149 Ariz. 248, 717 P.2d 927 (1985).

59. Additionally, Husband failed to provide evidence of community payments toward the principal of the Calle Redondo property or the mortgage balance on the property at the date of termination of the marriage, both necessary items to perform a proper calculation of a community interest under the *Drahos* case.

60. Therefore, Wife shall be awarded the Calle Redondo property as her sole and separate property, with no award to Husband for any community interest.

61. Regarding the 46th Place property, the Court does have the necessary information to perform a *Drahos* calculation.

62. Based on the settlement statement from the purchase of the property (trial exhibit 172), it appears that Wife made a down payment of \$124,000.00, and financed the remainder of the \$585,000 purchase price with a \$468,000 mortgage.

63. Based on the close proximity in time of the purchase to the parties' marriage (approximately two months after the date of marriage) and, based upon the disclaimer deed signed by Husband, the Court finds that the initial down payment was made with Wife's sole and separate funds.

64. Based on the documentary evidence the Court could locate, it appears that Wife's mortgage on this property was initially some form of interest only mortgage, as the Court could find only one record of a reduction in principal during the marriage in the amount of \$189.62, which is reflected in trial exhibit 305.

65. Even assuming that the \$189.62 paid toward principal was from a community source, the Court finds that amount to be *de minimis* in terms of establishing a community interest in any increase in value in the 46th Place property during the marriage.

66. Therefore, the Court declines to award any community interest in the 46th Place property to Husband.

67. Accordingly, the Court denies Husband's requests for a lien or other interest in either parcel of Wife's real property.

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HUSBAND'S OTHER BUSINESS ENTITIES

68. Husband operates his business interests through a maze of interrelated business entities, which appear to have business and tax avoidance purposes. Husband's web of businesses also appears designed to create barriers to creditors from pursuing Husband for claims. Among those entities is a purported charitable foundation, Sterling Foundation, which the evidence indicates Husband uses, at will, as a source of personal funds for payment of his personal obligations whenever he deems it necessary to do so. In fact, Husband testified that Sterling Foundation had made only \$2,000.00 worth of charitable contributions since its creation, but had been used to purchase vehicles and to make Husband's payment of temporary attorneys' fees to Wife.

69. The Court will discuss several of these many business entities below and then address a comprehensive approach to the business entities as a whole. Husband acknowledged during his deposition testimony his full time work during the marriage, including long hours, devoted to earning income and accruing consulting fees for his services as an entrepreneur and business manager.

70. Although the Court found Mr. Pankow's analysis to be informative and thoughtful, the Court does not find Mr. Pankow's analysis to be entirely credible, due, in part, to the limitations on the analysis of data he undertook, including failing to review the extent to which Husband paid his personal expenses through the various business entities. The Court also does not believe Mr. Pankow was provided all financial records necessary to accurately complete his assignment, some of which have never been produced by Husband.

71. ***Kandy Limited Partnership.*** Husband conducts much of his business through an entity which he identifies as Kandy Limited Partnership ("Kandy"). Based on transactions for this entity, it appears to be an alter ego for Husband, which Husband uses for his personal purposes at will, without specific regard for the rights of other purported partners.³ The Court notes, however, that there are other purported partners on the books for this partnership, who were not named or otherwise joined in this litigation in any way.

72. According to the financial statements for Kandy, book value of the entity, which is the presumptive value in the absence of other credible evidence, increased from \$743,528.20, as of the approximate date of the parties' marriage, to \$1,199,180.40 as of the date Husband served Wife with the divorce petition. The foregoing increase in book value of Kandy between the date of marriage and the date of service of the divorce petition presumptively is community property. Husband bears the burden to establish, by clear and convincing evidence, the increase in value is due exclusively to the inherent increase in value of the entity's assets, as opposed to any component of his services. *See Rueschenberg v. Rueschenberg*, 219 Ariz. 249, 196 P.3d 852, (App. 2008). Husband has not met that burden of proof. Therefore, while Kandy remains

³ For example, during this litigation, Husband transferred his Montana residence from Kandy's name into his own name in order to get a loan from Glacier Bank. He then transferred the Montana residence back to Kandy.

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Husband's sole and separate property, Wife might be entitled to a judgment against Husband for 50% of the increase in value of Kandy Limited Partnership – i.e., a judgment in the sum of \$227,826.10.

73. Based on the financial statements for Kandy Limited Partnership Husband, during the marriage and prior to service of the divorce petition, it appears that Husband paid from Kandy funds and cash flow not less than \$939,522.78 of improvements to his Montana property and \$41,842.44 of improvements to his Paradise Valley property, the cumulative total being \$981,365.22 for real estate improvements. The funds utilized represented commingled funds, which the Court, therefore, must presume are community property.

74. *Advisory Services, Inc. ("ASI")*. Husband also conducts much of his business through an entity which he identifies as ASI. Based on transactions for this entity, it also appears to be an alter ego for Husband, and the accounts and assets of this entity, for the most part, have become commingled between those of separate and community character. Therefore, Wife might have a community interest in at least the following related to ASI, as of the date of service of the divorce petition:

Asset	Book Value
Checking and Savings	\$ 58,680.00
Accounts receivable	\$ 111,117.00
Boat	\$ 28,000.00
Increased Loan to AJK	\$ 583,441.00
Increased Loan to GNEG	\$ 32,798.00
Poindexter receivable	\$ 3,800.00
Nino Aidj receivable	\$ 46,500.00
Increased Pocket MD and old Pocket MD Loans	\$ 240,460.00
Increased loan to Taurus Consultants	\$ 30,701.50
Stock Purchase	\$ 270,000.00
Vehicles	\$ 151,381.00
GMAC debts for vehicles	\$ (85,389.00)
Total	\$ 1,471,489.50

Based on Wife's community interest in commingled ASI assets, Wife might be entitled to judgment against Husband and ASI in the sum of \$735,744.75.⁴

⁴ The Court notes that during the marriage Wife had use of a credit card owned by ASI. The bills for that credit card were paid by ASI. Clearly, Wife did receive some of the benefit of her community interest from

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75. ***Sterling Foundation.*** Sterling Foundation is another of Husband's entities which he utilizes as an alter ego. Sterling Foundation had only cash at inception of the marriage. However, by the time of service of the divorce petition, Husband has not been able to demonstrate these accounts were not hopelessly commingled and cannot demonstrate the assets acquired in this entity, such as collector automobiles, were not purchased with commingled funds. Therefore, the entire book value of this asset, including accounts and vehicles held therein may constitute community property. The book value of this entity was \$148,566, as of the date of service. One appropriate disposition of the assets might be to award Husband the entity and grant Wife a judgment against Husband and Sterling Foundation in the sum of \$74,283, representing Wife's 50% interest therein.

76. ***Taurus Consultants*** is another entity through which Husband conducts business, and may be another alter ego for Husband. This company owns three vehicles that Husband's adult children drive. The Court did not, however, receive significant, credible evidence that would lead the Court to conclude whether and to what extent the assets of this entity have become commingled. Wife alleges she has a community interest in at least the following related to Taurus Consultants, as of the date of service of the divorce petition:

Asset	Book Value
Checking and Savings	\$ 2,652.00
Loan to SHS Group	\$ 26,425.00
<i>Total</i>	\$ 29,077.00

If the foregoing figures accurately reflect Wife's community interest in commingled Taurus Consultants assets, Wife might be entitled to judgment against Husband and Taurus Consultants in the sum of \$14,538.50.

77. ***A. J. Kacic & Associates.*** Husband conducted business through this entity as another alter ego. However, it is unclear to the Court whether this entity's accounts are commingled. Husband did not provide financial statements for this entity as of the time of marriage or as of the approximate date of service. However, the bank statements for the entity establish there were the following funds in accounts as of the date of service:

Account	Balance
Bank of Tucson, Checking	\$ 1,101.41
Bank of Tucson, MM Account	\$ 6,265.49
<i>Total</i>	\$ 7,366.90

ASI during the marriage. The Court does not have the ability, however, to specifically quantify amounts received by Wife.

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If the Court received information that the accounts were commingled with community funds, Wife might be entitled to judgment against Husband and A.J. Kacic & Associates in the sum of \$3,683.45. Here, however, the Court did not receive sufficient evidence to make a determination of the nature of the funds in those accounts.

78. The foregoing analysis with respect to Husband's entities, if taken at face value as stated above, would entitle Wife to judgments against Husband totaling over \$1,000,000.00. The Court, however, has little confidence in the propriety of that calculation, based on both parties' failures of disclosure, the lack of credibility in both parties' testimony, and the fact that the numbers fail to credit Husband for any amounts provided to Wife directly or through CCK Properties, LLC. Additionally, the numbers do not consider amounts earned by Wife during the marriage (information we likely do not have based on Wife's failure to produce tax records), and that were not traced back to use on community purposes.

79. As an alternative to the individual company by company analysis set forth above, Wife's expert, Robert Mroz, of Navigant Consulting, took a more global, comprehensive approach to Husband's various entities, looking at whether Husband took reasonable compensation for his services and whether the entities had profits, prior to termination of the marital community upon service of the divorce petition. According to Mr. Mroz, Husband's compensation was deficient by at least \$609,210, to meet the standard of reasonable compensation, which enhanced Husband's separate property accordingly. This would entitle Wife to a judgment against Husband in the sum of approximately \$304,605, assuming the salary actually paid (\$305,709) actually went to community expenses (although some of it likely did). Because the salary taken did not go to community accounts (the parties had none), per Mr. Mroz, Wife would be entitled to receive an additional approximately \$150,000 from Husband, bringing the total amount due to approximately \$455,000.

80. As another alternative, Mr. Mroz attempted to determine whether Husband's businesses generated profits through Husband's efforts during the marriage, finding there were such presumptively community profits of between \$731,264 and \$977,441, including the Pocket M.D. transaction, which would entitle Wife to between \$365,000 and \$488,000 as her share (from which \$220,632 would need to be subtracted for the Pocket M.D. ruling, *see supra*). The numbers for the community interest in profits reasonably correlate with the estimate Mr. Mroz calculated for community undercompensation in salary, based on revenues and services rendered. The Court finds credible and persuasive the testimony of Mr. Mroz of Navigant Consulting. The Court also finds this to be the preferred method of resolving this issue under the circumstances of this case.

81. Based on the failure of Wife to account for her community income earned during the marriage, and because it is clear that Wife received significant, although unquantified amounts of Husband's community income during the marriage, the Court determines to use the figure at the low end of the range provided by Mr. Mroz in his calculations.

82. Therefore the Court determines Wife should receive a judgment against Husband in the sum of \$365,000, including the sum attributed to Pocket, M.D., for the community interest in

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Husband's income and business profits during the period of the marriage completed through the date of service of process. This judgment does not include Wife's interest in the pension plan, which the Court independently addresses *infra*.

83. The Court notes that this judgment amount was not determined with the precision this Court generally prefers to utilize in dissolution matters. This is largely a result, however, of the manner in which the evidence was presented, and the fact that vital pieces of evidence are either missing or lack credibility. Under such circumstances, the Court believes the result is equitable.

PENSION PLAN

84. Husband maintains a pension plan through one of his entities, Advisory Services, Inc. This plan is a Defined Benefit Plan known as the "Advisory Services, Inc. Defined Benefit Plan."

85. The Defined Benefit Plan was in existence as of the date of marriage of the parties (August 7, 2004).

86. Pursuant to Trial Exhibit 397, it appears that there are two plan participants as of fiscal year 2007, Husband and an employee named Loretta Griffin.

87. To allocate the entire contents of the plan to Husband, as Wife requests, might operate to harm Loretta Griffin,⁵ or any other plan participants that might exist.

88. The Court finds that it is appropriate that Wife's interest in the Defined Benefit Plan will be calculated consisted with the *Van Loan* formula, first articulated in *Van Loan v. Van Loan*, 116 Ariz. 272, 569 P.2d 214 (1977).

89. For purposes of employing the *Van Loan* formula, the Court reiterates that the date of service of the Petition for Dissolution was September 25, 2006.

90. Based upon the Plan Specifications set forth in trial exhibit 36, it appears that Husband will be eligible to receive his defined benefit under the plan at the age of 62.

91. Plan contributions made during the marriage or for the period of service rendered during the marriage presumptively are community property.

92. The community property portion of the defined benefit plan shall be divided equally by Qualified Domestic Relations Order ("QDRO") and the Court will appoint Richard Underwood, Esq., as a special master to prepare the appropriate QDRO.

93. The parties shall equally share Mr. Underwood's reasonable fees and shall deposit any necessary retainer with Mr. Underwood within 45 days.

94. To the extent Mr. Underwood requires additional information or plan documentation not included among the current trial exhibits, Husband is ordered to produce such

⁵ The Court notes that Loretta Griffin's employment with ASI may have terminated, and it is unclear whether any contributions made to the plan on behalf of Ms. Griffin have resulted in a "vested" interest in the plan for Ms. Griffin. Nonetheless, the Court is confident that Mr. Underwood can sort such issues out through the preparation of an appropriate QDRO, as set forth below.

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documentation to Mr. Underwood immediately. Failure to cooperate with Mr. Underwood in this regard may result in sanctions to Husband, including but not limited to an order that he bear a greater share (or the entirety) of Mr. Underwood's fees.

VEHICLES

95. Wife's personal vehicles, with the exception of a 2001 GMC Yukon LS and Austin Healey, have allegedly been repossessed. Because those repossessed vehicles were Wife's sole and separate property, the Court does not need to take any further action concerning those vehicles; other than to indicate that any deficiencies related to those vehicles are Wife's sole and separate obligation, and she shall hold Husband harmless therefrom.

96. Wife also has in her possession the vintage 1960 Austin Healey vehicle. Husband purchased this vehicle for Wife as a gift,⁶ and titled it to CCK Properties, LLC of which Wife is the sole member. The parties set up CCK Properties, LLC to funnel funds from Husband's business entities to Wife and then create tax deductions. This vehicle is Wife's separate property. To the extent the physical title remains in Husband's possession, he shall deliver it to Wife immediately.

97. Any vehicles in Husband's possession are awarded to him as his sole and separate property, subject to any liens or encumbrances thereon.

98. Wife is awarded the 2001 GMC Yukon LS in her possession, subject to any liens or encumbrances thereon.

CCK PROPERTIES, LLC

99. CCK Properties, LLC is a single member LLC, with Wife as the only member, which the parties created for Wife during the marriage. The business was used primarily for Husband to funnel funds from his various business entities to Wife. Wife, however, at times contributed her salary and/or commissions to CCK Properties, LLC.

100. During the marriage, Wife was comfortable with Husband funneling funds to her through CCK Properties, LLC. To the extent that she alleged that she was not familiar with the manner in which this entity operated, such allegations were unproven and any of Wife's testimony in that regard lacked credibility.

101. Despite Wife's allegations that Husband was in primary control of CCK Properties, LLC, the evidence at trial clearly established that Wife regularly used this business, and made frequent cash deposits and withdrawals to the account(s) held by this corporation.

102. Wife has not filed, or disclosed, business income tax returns for CCK for the last four years.

⁶ The Court notes that Husband's position regarding ownership of the Austin Healey has been somewhat unclear, and has changed throughout this litigation. In that regard, the Court incorporates herein its findings set forth on page 3 of the Court's January 17, 2008 minute entry ruling on temporary orders.

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103. CCK Properties, LLC shall be awarded to Wife as her sole and separate property, and Wife shall indemnify Husband and hold Husband harmless from all obligations associated with that entity, including all income taxes due with respect to operation of the LLC at any time during the marriage.

PROCEEDS FROM THE SALE OF 4901 EAST LAFAYETTE RESIDENCE

104. In late August, 2004, shortly after the parties married, Husband acquired a residence located at 4901 East Lafayette, Phoenix, Arizona in his sole and separate name.

105. Wife, an experienced real estate agent, signed a disclaimer deed with respect to the residence (as Husband did for properties purchased by Wife during the marriage). Despite Wife's arguments, the Court does not find the disclaimer deed to be invalid.

106. Further, the Court does not find that Wife has proven any separate oral agreement regarding ownership of the house.

107. The Court finds that Husband paid \$222,500 toward the purchase of the house at the time of the settlement statement (August 30, 2004), and he financed the remainder with a mortgage of \$667,500.

108. Based on the close proximity in time of the purchase to the parties' marriage (twenty-three days after the date of marriage) and, based upon the disclaimer deed contemporaneously signed by Wife, the Court finds that the initial down payment was made with Husband's sole and separate funds.

109. Additionally, the mortgage on the Lafayette property indicated that all monthly payments would be provided first to interest. (See trial exhibit 205.)

110. In fact, when Husband subsequently sold the property on September 28, 2005, there had been a net increase in the principal balance owed on the mortgage of \$5,500 to a total of \$673,000. (See trial exhibit 205 at KAC534.)

111. Thus, even assuming that mortgage payments made during the marriage were from community funds, Wife has not proven that any payments made toward the mortgage resulted in a reduction of principal of the mortgage balance.

112. With respect to the Lafayette property, Wife produced records demonstrating she did, in fact, invest money in the property for improvements, including \$6,600 for painting and \$3,600 for flooring. The total investment proven by Wife equals \$10,200.00.⁷

113. The Lafayette home sold in 2005, and the \$596,762 of proceeds were held in escrow pending court order or settlement of the previously filed 2005 divorce action. After the parties reconciled, the monies were released to Husband, who did not transmit any of the proceeds to Wife, except for \$5,000 that was paid to Wife's attorney from the 2005 dissolution case, John P. Moore, on Wife's behalf.

⁷ Wife asserted other contributions, but the Court only finds that she has proven the contributions totaling \$10,200.

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114. The Court did not find Wife's testimony to be credible concerning an oral agreement entered into related to the dismissal of the 2005 dissolution matter with respect to the parties equally sharing the proceeds of the Lafayette property.

115. Under *Drahos*, and based on the foregoing findings, the Court calculates Wife's interest in this property as follows:

Fair Market Value at Date of Purchase (8/30/04) = \$890,000.00

Separate Property Dollars Invested by Wife near date of purchase = \$10,200.00

$\$10,200 \div \$890,000.00 = 1.15\%$ (Wife's interest in property near date of purchase)

Increase in value between 8/30/04 and 9/28/05 = \$385,000.00⁸

Wife's portion of increase = \$4,427.50⁹

Wife's portion of increase (\$4,427.50) + her investment (\$10,200) = \$14,627.50

Wife's share (\$14,627.50) - \$5,000.00 paid to Mr. Moore = \$9,627.50

116. Therefore, Wife is entitled to a judgment against Husband in the sum of \$9,627.50 regarding the Lafayette residence.

HOUSEHOLD CONTENTS AND PERSONAL POSSESSIONS

117. Except as set forth immediately below, each party shall retain all of the personal property and household furnishings currently in his or her possession.

118. Husband has been in possession and control of an expresso cart owned by Wife as her sole and separate property. The Court, therefore, orders Husband to turn over and return to Wife her expresso cart immediately.

SPOUSAL MAINTENANCE

119. A.R.S. § 25-319(A) provides four alternative grounds upon which the trial court may award spousal maintenance.

120. The Court finds that in accordance with A.R.S. § 25-319(A) Wife has sufficient property and income to provide for her reasonable needs as measured by her marital standard of living.

121. The Court finds that Wife currently owns two separate residences. Further, Wife owns or possesses, apparently free and clear, two separate valuable automobiles, a 2001 GMC Yukon LS and the Austin Healey. It is unclear what other property Wife may possess as she has failed to file her federal and state income tax returns for the years 2005, 2006 and 2007. The Court finds that Wife's tax returns would best demonstrate income from real estate commissions and her real estate rental investment properties.

122. Wife is receiving a substantial judgment as a result of this decree.

⁸ Calculated as sales price of \$1,275,000 minus purchase price of \$890,000.

⁹ 1.15% of 385,000.00.

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123. Wife has stated (in a sworn statement signed October 2006, after the date of service of the Petition for Dissolution) that her employment as a real estate agent produced (at the end of 2006) \$25,000 of gross income per month.¹⁰ The Court finds that there is no legitimate reason Wife could not be working at her chosen profession as a real estate agent or in a related field.

124. Additionally, there is reasonable evidence for the Court to assume Wife has generated income during the pendency of this dissolution action, but failed to report such efforts or properly disclose them.

125. Wife's testimony about her inability to obtain employment was entirely incredible and self-serving.

126. Wife's indications that emotional issues or, perhaps, alcoholism prevented her from obtaining employment during the pendency of these proceedings were not borne out by credible evidence.

127. Wife's claim that she was wrongfully terminated from her employment with River Walk LLC by Husband was neither credible nor supported by the evidence.

128. The Court finds that the parties had a marriage of an effective duration of just over 2 years at the time of service of the Petition for Dissolution, and Wife is 42 years of age which is not an impediment in any respect to her maintenance of employment adequate to be self-sufficient. Although Wife may have experienced some mild depression related to this litigation, the Court received no credible evidence of a mental or physical disability that would interfere with Wife's ability to work.

129. In *Rowe v. Rowe*, 154 Ariz. 616, 744 P.2d 717 (1987) the trial court refused to grant spousal maintenance to wife in spite of her argument that after she paid her attorneys' fees, costs and debts and bought a suitable residence she would only have a nominal sum remaining to invest to provide for her support. Further, the *Rowe* court held that the trial court must examine A.R.S. § 25-319(A) to determine whether the requesting spouse is entitled to an award of spousal maintenance at all. The subsection (B) statutory factors need not be applied if the requesting spouse does not provide sufficient justification under subsection (A). The case of *Neal v. Neal*, 116 Ariz. 590, 570 P.2d 758 (1977) supports the proposition that a requesting spouse must use reasonable efforts to be self-sufficient in order to qualify under A.R.S. § 25-319(A) for an award of spousal maintenance. As in this case, the requesting spouse may not voluntarily withdraw from employment or fail to use reasonable efforts to secure appropriate employment to provide for their own support to qualify for an award of spousal maintenance. Here, the Court does not find that Wife has used reasonable efforts to obtain employment, or Wife has obtained employment, but has failed to properly disclose such employment in the course of this litigation.

130. The Court finds that Wife has had almost 2 years to pursue the production of reasonable income and yet, has testified that she has earned only minimal amounts during that

¹⁰ The Court is somewhat dubious about the truth of this sworn statement, particularly given Wife's invocation of the Fifth Amendment privilege when asked about this particular statement. Nonetheless, the Court finds that the statement does indicate that Wife's earning potential as a real estate agent was not insignificant.

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time. It is Wife's burden to demonstrate her reasonable efforts to this Court to secure appropriate employment sufficient to provide for her own reasonable needs. The Court finds that Wife is able to support herself by the use of reasonable effort to secure and maintain employment.

131. Wife has been unable to demonstrate any of the factors under A.R.S. § 25-219(A) to support her request for spousal maintenance.

132. The Court finds that during the time of the parties' marriage they resided together only infrequently and each maintained, during the entirety of their marital relationship, a separate marital residence. Wife has owned her residence at 4430 N. 46th Place since November 2004 and resided in that residence during at least significant portions of the parties' marriage.

133. The Court finds that Wife also owns another residence maintained by her as an investment real estate property located at 4595 Calle Redondo. Wife purchased that residence on or about December 23, 2005.

134. The Court finds that Wife refinanced the residence at 4430 N. 46th Place in December 2006. From that refinance, Wife withdrew substantial funds (\$113,000) to pay professional fees and other expenses. The greatest portion of Wife's current living expenses relate to her housing costs (including the increased payment on her personal residence which was refinanced after the divorce was filed) and such expenses are neither reasonable nor appropriate.

135. The Court finds that Wife has claimed unreasonable and extravagant expenses exceeding \$25,000 per month in her May 2007 Affidavit of Financial Information.

136. In light of the facts adduced at trial, the Court finds no good cause to reconsider its prior *pendente lite* temporary order denying Wife an award of spousal maintenance.

137. Accordingly, the Court finds that neither party is entitled to an award of spousal maintenance, and therefore, the Court shall award none.

MOCK OBLIGATION

138. There presently may be owing to Mock & Associates a sum in excess of \$18,375.00, related to accounting/expert services rendered by Don Mock related to attempting to sort out community versus sole and separate aspects of financial transactions during the parties' marriage.

139. The parties both agreed to allow Mr. Mock to undertake these services to assist with their dissolution.

140. After Mr. Mock rendered his services, the parties failed to pay him.

141. The services rendered by Mr. Mock were for the benefit of both parties and was initially intended for use in this litigation.

142. Therefore, the Court finds the Mock obligation is a community obligation and both parties shall be responsible for one-half of the obligation.

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SECURITY FOR PAYMENT OF HUSBAND'S OBLIGATIONS TO WIFE

143. Pursuant to *ARS § 25-318.E.*, the Court may order a party to provide security, from both community property and sole and separate property, to assure payment of property awards and spousal maintenance.

144. Wife has asked the Court to utilize an alter ego theory to place a lien not only on Husband's ownership interest in his various businesses, but also on the assets held by those various businesses. In support of this request, Wife has cited the Court to the case of *Standage v. Standage*, 147 Ariz. 473, 711 P.2d 612 (App. 1985).

145. The Court acknowledges that the *Standage* case is good law in Arizona, and stands for the proposition that in a dissolution action, the court may pierce the corporate veil "where the corporation is shown to be the alter ego or business conduit of a person, and where observing the corporate form would work an injustice." *Id.* at 476, 711 P.2d at 478.

146. The Court notes, however, that the corporation discussed in *Standage* was solely owned by the husband and wife in that case. Here, at least one of Husband's businesses, Kandy, is a partnership, in which other partners have ownership interests on the books. Those partners were not named in this litigation, or otherwise given an opportunity to contest Wife's request of this Court to place a lien on all assets held by Kandy. Under these circumstances, the Court is not comfortable "piercing the corporate veil" with regard to Kandy, as was done in the *Standage* matter.

147. Additionally, unlike in *Standage*, most of Husband's interest in assets or businesses is owned through various trusts. Those trusts were not specifically named in this lawsuit, and the trustees and beneficiaries of said trusts, which include persons other than Husband, were not given an opportunity to defend against Wife's claims.

148. Furthermore, Husband's use of various business forms and entities to protect assets against claims of creditors has clearly been established in this matter.¹¹ In fact, such activity is a substantial part of the reason that Wife seeks to pierce the corporate veil of Husband's alter ego businesses. The *Standage* case, however, warns that "[t]he possibility of defrauding creditors of the corporation should disincline a trial court to award corporate assets to individual parties in a dissolution proceeding. However, where the evidence indicates that all creditors are provided for, and that an injustice will otherwise result, the action is not erroneous." *Id.* at 477, 711 P.2d at 616.

149. Here, with regard to all but one of Husband's "alter ego" businesses, the Court does not feel that it received evidence to indicate that all of the creditors of those businesses have been identified and provided for. The Court simply is not comfortable piercing the corporate

¹¹ As noted at the temporary orders hearing, Husband's pre-hearing statement specifically indicated that he placed the Austin Healey in CCK Properties, LLC (of which Wife was the sole owner) "for purposes of asset protection from the parties (sic) potential creditors." Thus, it is clear that avoidance of creditors is a consideration of Husband's when determining how to title assets and organize his various business interests.

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veil, based on the evidence presented, with regard to most of Husband's business entities. The Court is additionally concerned about inadvertently providing Wife an advantage or priority over other legitimate creditors of those businesses. Thus, the Court, in its discretion, declines Wife's request to lien the assets of Husband's businesses, with the exception of those held by Sterling Foundation, as discussed below.

150. Sterling Foundation is a non-profit Arizona 501(c)(3) corporation. Per the Articles of Incorporation (Trial Exhibit 70), Sterling Foundation "shall be operated exclusively for charitable, literary and educational purposes within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1986."

151. During the marriage, Husband gifted approximately \$150,000 of his earnings from ASI to the Sterling Foundation, without Wife's knowledge or agreement. It appears that these funds represented community earnings.

152. Husband testified, however, that as of the time of trial, Sterling Foundation has only made \$2,000.00 worth of charitable donations since its formation in 2004. No charitable contributions were made from Sterling Foundation in 2008.

153. Contemporaneous with Husband purchasing the Austin Healey at the Barrett Jackson car auction in 2006 and titling it to CCK Properties, LLC, Husband bought two other collector automobiles and titled them to Sterling Foundation. The Court finds no credible evidence of a legitimate business purpose for Husband to title the collector automobiles to his non-profit corporation.

154. Per Husband, one of the collector vehicles titled to Sterling Foundation, a 1965 Chevrolet Corvette was sold and the funds were returned to Sterling Foundation's account.

155. Husband claims to still have possession of the other vehicle, a 1968 Pontiac GTO, which at the time of trial, was located at Husband's Montana residence.

156. Additionally, per Husband's testimony, he paid \$70,000.00 of the award of temporary attorneys' fees ordered to Wife from cash taken from Sterling Foundation. Husband claims he signed a Promissory Note regarding the \$70,000.00, but he did not disclose such Promissory Note as part of these proceedings.

157. Husband took money from Sterling Foundation for Wife's attorney fee award despite the fact that Sterling Foundation's Articles of Incorporation indicate "[t]he assets of the Corporation are irrevocably dedicated to the purposes described above, and no part of the net earnings of the Corporation shall inure to the benefit of or be distributed to its directors, officers, or other private purposes...." Trial Exhibit 70, Art. IV.

158. Finally, the Court received no evidence that would lead the Court to believe that Sterling Foundation, Husband's non-profit corporation, has any significant creditors (apart from Husband, himself, for the funds utilized to pay Wife's attorneys' fees).

159. The evidence clearly demonstrates that Husband utilizes Sterling Foundation as an alter ego conduit of himself. With regard to that specific business, observing the corporate form would work a substantial injustice to Wife, as the company holds what appear to be assets comprised of or purchased with community funds.

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160. Accordingly, it is the intent of the Court to provide Wife with a security interest in the GTO automobile titled to Sterling Foundation, and in all accounts held in the name of Sterling Foundation, in order to assure payment of at least a portion of the obligations the Court imposes on Husband.

**CONTEMPT AGAINST HUSBAND REGARDING NON-PAYMENT OF LEGAL
FEES AND EXPENSES**

161. On or about January 17, 2008, this Court issued an order in this proceeding, which required Husband to pay legal fees and expenses as follows:

IT IS HEREBY ORDERED that within thirty days, Husband shall pay to Wife's attorneys, Franks & Sheldon, P.C., the sum of \$75,000 as an initial contribution, *pendente lite*, toward Wife's attorney's fees, costs and expenses of this litigation. This award is *pendente lite*, and subject to revision in favor of either party at time of trial.

(footnote omitted) (hereinafter the "Fee Order").

162. Husband did not pay the foregoing legal fees or expenses in a timely manner, causing Wife to file a contempt petition and incur additional attorneys' fees and expenses.

163. Husband was aware of the Court's Fee Order.

164. Husband, at all times, had the ability to comply with the Court's Fee Order.

165. Husband's failure to comply with the Court's Fee Order was a knowing, willful contempt of the Court.

166. Although Husband ultimately complied with the Fee Order on the date the Court set for a contempt hearing – i.e., May 6, 2008 – and purged his contempt by making the payment on that date, his actions purging the contempt do not obviate the need to find Husband was in willful contempt of Court.

167. Husband caused Wife to incur substantial attorneys' fees and expenses in order to prepare for the contempt hearing and to be prepared to prove Husband's ability to pay the temporary attorneys' fee order.

168. As a sanction for Husband's contempt, and for his unreasonable conduct pursuant to A.R.S. § 25-324, the Court shall enter a judgment against Husband for an additional \$5,000.00 in attorneys' fees.

169. Husband also shall pay Wife statutory interest on the original \$75,000 fee award from the date it was due (February 16, 2008) until the date actually paid (May 6, 2008). Therefore, the Court shall enter judgment against Husband, below, in the amount of \$1,623.45. The Court enters this award as a matter of equity to deprive Husband of the benefit of delay.

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**JUDGMENT AND CONTEMPT FOR ADDITIONAL \$21,294.90
OF ATTORNEYS' FEES**

170. By order dated September 12, 2008 (filed September 15, 2008), the Court ordered Husband to pay an additional \$21,294.90 of attorneys' fees (the "Second Fee Order"). Husband did not comply with this order.

171. Husband was aware of the Court's Second Fee Order.

172. Husband, at all times, had the ability to comply with the Court's Second Fee Order.

173. Husband's failure to comply with the Court's Second Fee Order was a knowing, willful contempt of the Court.

174. It appears that the Second Fee Order remains outstanding. The Court declines Wife's request to reiterate such judgment herein as the Second Fee Order is a freestanding judgment that can be executed upon without incorporation in this Decree.

175. Wife has requested that the Court incarcerate Husband as a result of Husband's contempt of court for failure to timely pay the Second Fee Order in full, and to keep Husband incarcerated until he purges his contempt of court by doing so.

176. Although incarceration is sometimes available as a sanction for contempt of Court, the Court is not convinced that the sanction is available in this instance (failure to pay an attorneys' fee judgment). The Second Fee Order was neither a temporary order, nor a support order.

177. Even assuming, *arguendo*, that the Court has the ability to incarcerate Husband as a result of this contempt, the Court, in its discretion, declines to do so.

178. Husband caused Wife to incur legal fees and expenses related to his non-payment of the Second Fee Order.

179. The Court, therefore, as a sanction, and for his unreasonable conduct pursuant to A.R.S. § 25-324, shall enter a judgment against Husband for an additional \$5,000.00 in attorneys' fees, which when combined with the prior \$5,000.00 attorneys' fee award, *supra*, will result in a total judgment for additional attorneys' fees of \$10,000.00.

PAYMENT OF DISCOVERY MASTER FEES

180. There are fees outstanding owed to Discovery Master John Herrick in the amount of \$6,598.00, as set forth in the Discovery Master Report of February 26, 2009, and filed herein the same date.

181. The Court finds that the fees charged by the Discovery Master were reasonable under the circumstances of this litigation.

182. Despite the existence of a Discovery Master for the majority of this litigation, neither party properly made full disclosures. Both parties engaged in "scorched earth" litigation apparently designed to wear the other party down or exhaust their respective resources.

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183. Therefore, the Court affirms the existing order that the parties equally bear the cost of the Discovery Master.

184. Therefore, the Court shall enter judgment below against each of the parties, and in favor of John Herrick, in the amount of \$3,299.00. Because the Court previously ordered the parties to pay the remainder of the Discovery Master's fees by February 1, 2009, statutory interest shall accrue on the judgment from that date. Of course, any payments received by Mr. Herrick subsequent to his February 26, 2009 report should be properly applied to reduce the amount of the judgment and/or interest thereon.

ATTORNEYS' FEES AND EXPENSES

185. As discussed *supra*, the Court previously ordered Husband to pay Wife sums for attorneys' fees – i.e., the Court awarded Wife the sums of \$75,000 (a temporary, *pendente lite*, order) and \$21,294.90 (a discovery sanction). Those sums were justifiable based on the complexity of this case, Husband's unusually complicated web of business holdings and confusing financial transactions, Husband's lack of timely disclosure and Husband's greater financial resources.

186. The Court has awarded an additional \$10,000.00 in attorneys' fees herein as a sanction for Husband's failure to timely comply with this Court's prior orders regarding attorneys' fees and for unreasonable positions taken by Husband.

187. The Court has considered both the positions adopted by the parties and the parties' respective resources.

188. It does appear that Husband has greater resources than Wife, but the Court has little confidence that it knows the full extent of either party's resources. Additionally, Wife's unreasonable failure to obtain long-term employment during these proceedings has contributed to any disparity in the parties' resources.

189. Each party took positions during this litigation that were very unreasonable. This ruling has previously described numerous such positions, and the Court will not attempt an exhaustive list at this time. The Court does, however, feel compelled to point out additional examples that may not have been fully discussed above.

190. With regard to Husband,

- a. Husband unreasonably refused to provide certain of his business records in the QuickBooks format for use by Wife's expert, which resulted in a lengthy delay of the parties' trial, originally set to begin July 21, 2008. Husband refused to provide the records even after receiving a contrary ruling from the Discovery Master regarding the need to produce the records.
- b. Husband's complete failure to produce records regarding his ownership interest in Zephyr Biometrics was highly unreasonable, particularly given the discovery requests that were made by Wife during this litigation. Husband gave no good

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cause for failing to disclose this information. It appears to the Court the failure to disclose this information was intentional on Husband's part.

191. With regard to Wife,

- a. Wife pled guilty and was convicted of a domestic violence crime in which Husband was the designated victim. Wife claimed the conviction negatively affected her ability to obtain employment, and sought to blame Husband for her guilt and/or her guilty plea (the theory was not entirely clear).¹² The Court finds this theory to have been unreasonably asserted. Wife properly abandoned this theory toward the latter part of the five-day trial, likely to avoid the Court allowing specific information about Wife's crime and/or criminal proceedings to be admitted in evidence. Nonetheless, Wife asserted this unreasonable position during pre-trial hearings and proceedings and led the Court, and Husband, to believe evidence would be offered in support of this contention.
- b. Wife complains that Husband has not meticulously traced all income he received during the marriage to demonstrate that the income was used for community purposes, and therefore, she would like the Court to find that none of Husband's income produced during marriage was used for community purposes and to award her half. And yet, Wife has offered no better record of her income during marriage, nor does she attempt to carefully trace the use of her income on community purposes. Wife testified at trial, for example, that many of the commissions she earned from her employment with Riverwalk or Zacher were deposited into CCK Properties, LLC, her sole and separately owned corporation. Wife's double standard with regard to this issue is highly unreasonable.

192. With regard to both parties, although the Court acknowledges that this matter was a very hotly contested matter, the Court also finds that both parties' briefings and oral presentations in this case were rife with unnecessary *ad hominem* attacks on the opposing party and/or counsel.

193. Accordingly, the Court, in its discretion, declines to award either party any additional attorneys' fees, except as previously awarded in this litigation or in this Decree.

¹² This theory was primarily asserted orally, however, seeds of it can be identified on page 3 of Wife's March 2, 2009 Separate Pretrial Statement, which cites "legal problems (including dealing with criminal proceedings Husband unrelentingly pursued against her...)" as exacerbating her difficulties in earning a living. This is stated in the section of the pretrial statement supporting Wife's claim for spousal maintenance.

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DECREE OF DISSOLUTION OF MARRIAGE

Based on the foregoing Findings of Fact and Conclusions of Law,

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person upon the signing and filing of this minute entry as the Decree of Dissolution of Marriage.

IT IS FURTHER ORDERED denying Wife's request for spousal maintenance.

IT IS FURTHER ORDERED awarding Husband, as his sole and separate property, all of his remaining ownership interests, if any, in River Marvin, LLC or River Elks, LLC, subject to any liens and encumbrances thereon. Husband shall indemnify and hold Wife harmless from any and all liabilities associated with River Marvin, LLC or River Elks, LLC, including but not limited to, any loan guarantees Wife executed in relation to these business entities.

IT IS FURTHER ORDERED awarding to Husband, as his sole and separate property, any interest he holds in the following trusts and businesses, including any assets held by such trusts and/or businesses, subject to any liens and encumbrances thereon, from which he shall hold Wife harmless:

- Advisory Services, Inc.
- Kandy Limited Partnership
- Taurus Consultants, Inc.
- Zephyr Biometrics, Inc.
- Andrew J. Kacic Revocable Trust created August 24, 1997
- Andrew J. Kacic Irrevocable GSTT Trust created August 24, 1997
- Andrew J. Kacic Irrevocable Trust created November 22, 1993
- The Yosemite Irrevocable Trust II created January 5, 2004
- Sterling Foundation, an Arizona nonprofit corporation

IT IS FURTHER ORDERED awarding to Wife, as her sole and separate property, subject to any liens and encumbrances thereon, the following property:

- Real property located at 4595 E. Calle Redondo in Phoenix, Arizona
- Real property located at 4430 N. 46th Place in Phoenix, Arizona
- CCK Properties, LLC, and any assets held by same
- The espresso cart
- Wife's 2001 GMC Yukon LS

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- The 1960 Austin Healey¹³

Wife shall hold Husband harmless from any liabilities associated with this property.

IT IS FURTHER ORDERED that Husband shall immediately make arrangements to return the expresso cart to Wife consistent with this Decree.

IT IS FURTHER ORDERED awarding to each party as his/her sole and separate property all other personal property currently in his/her possession, subject to any liens and encumbrances thereon.

IT IS FURTHER ORDERED that the parties shall share, equally, any amount received from River Elks, LLC (now believed to be in bankruptcy) for the \$10,000.00 debt owed to the parties related to River Walk unit 87. The parties shall cooperate, as necessary, to assert appropriate claims for the \$10,000.00 in the River Elks bankruptcy, to the extent that remains a possibility.

IT IS FURTHER ORDERED that any debt to Mock & Associates or Don Mock that is determined in separate litigation with the parties is a community debt, and the parties shall be equally responsible for said debt.

IT IS FURTHER ORDERED awarding to Cynthia Christie-Lee, as her sole and separate debts, any debts owed to Realty Executives or to other brokers related to Wife's work on the River Walk Development, to JJQ Investments, or to Carl Wells. Wife shall indemnify and hold Husband harmless from these debts/liabilities.

IT IS FURTHER ORDERED awarding to Wife, as her sole and separate debt, any sum she owes to the law firm of Perkins Coie. Wife shall indemnify and hold Husband harmless from this debt.

IT IS FURTHER ORDERED awarding judgment in favor of Cynthia Christie-Lee and against Andrew Kacic in the amount of \$386,250.95.¹⁴ This judgment shall bear interest at the statutory rate of ten percent (10%) per annum until paid.

¹³ To the extent that Husband holds the physical title to this vehicle, he is ordered to deliver it to Wife or her counsel immediately.

¹⁴ This figure is comprised of the following figures set forth above in the findings of fact and conclusions of law: \$365,000.00 (Wife's community interest in Husband's earnings); \$9,627.50 (Wife's interest in the Lafayette residence); \$1,623.45 (interest on the temporary attorneys' fee award) and \$10,000.00 (additional attorney's fee award).

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Consistent with the Court's findings set forth above, including but not limited to its findings that the Arizona non-profit corporation, Sterling Foundation, is an alter ego of Husband, and pursuant to A.R.S. § 25-318(E),

IT IS HEREBY ORDERED imposing a lien on any and all assets held in the name of Sterling Foundation to secure payment of the \$386,250.95 judgment set forth above in favor of Cynthia Christie-Lee and against Andrew Kacic. This lien is intended to grant Cynthia Christie-Lee a security interest in all assets of Sterling Foundation, specifically including, but not limited to:

- The 1968 Pontiac GTO Coupe, VIN # 242378P345039
- Sunrise Bank of Arizona Checking Account No. 105202033
- Sunrise Bank of Arizona Money Market Account No. 205202263
- The proceeds of any loans or promissory notes in which Sterling Foundation is the creditor.

IT IS FURTHER ORDERED that Andrew J. Kacic shall not personally, or through third parties, cause any assets of Sterling Foundation to be dissipated, liquidated, sold, encumbered, dissolved, transferred, gifted, or otherwise disposed of, in contravention of the aforementioned lien.

IT IS FURTHER ORDERED that the community portion of Husband's Defined Benefit Plan, held at ASI, shall be divided equally by QDRO.

IT IS FURTHER ORDERED appointing attorney Richard Underwood as Special Master for the purpose of preparing, and submitting to the Court for signature, an appropriate QDRO consistent with this Court's findings and orders. Mr. Underwood's fees shall be equally borne by the parties.

IT IS FURTHER ORDERED that the parties are to immediately contact Mr. Underwood's office, and to cooperate with any all requests Mr. Underwood makes for documentation necessary to complete his task. To the extent Mr. Underwood requests a retainer to begin his work, each party shall deposit his or her share of said retainer with Mr. Underwood no later than 45 days from the filing date of this Decree.

IT IS FURTHER ORDERED awarding judgment against Andrew Kacic, and in favor of attorney John Herrick, in the amount of \$3,299.00. Interest shall accrue on this judgment from February 1, 2009 until paid at the statutory rate of ten percent (10%) per annum.

IT IS FURTHER ORDERED awarding judgment against Cynthia Christie-Lee, and in favor of attorney John Herrick, in the amount of \$3,299.00. Interest shall accrue on this judgment from February 1, 2009 until paid at the statutory rate of ten percent (10%) per annum.

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IT IS FURTHER ORDERED that John Herrick shall be entitled to recover any reasonable costs of collection proceedings regarding his judgments against the parties in this matter, via separate application to the Court.

IT IS FURTHER ORDERED signing this minute entry as a formal written Decree of Dissolution of Marriage and Judgment of the Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

/s/ Dean M. Fink

JUDGE DEAN M. FINK
JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.